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Cooperation between the United Nations and the Asian-African Legal Consultative Committee

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Report of the Secretary-General

Introduction

1. The present report is submitted pursuant to paragraph 5 of General Assembly resolution 51/11 of 4 November 1996 entitled "Cooperation between the United Nations and the Asian-African Legal Consultative Committee".

2. The General Assembly, by its resolution 35/2 of 13 October 1980, had invited the Asian-African Legal Consultative Committee (AALCC) to participate in its sessions and its work in the capacity of an observer. Subsequently, the permanent observer missions of AALCC to the United Nations were established in New York and at Vienna.

3. On the occasion of the commemoration of the twenty-fifth anniversary of the Consultative Committee, the General Assembly, in its resolution 36/38 of 18 November 1981, requested the Secretary-General of the United Nations to carry out consultations with the Secretary-General of AALCC with a view to strengthening further and widening the scope of cooperation between the two organizations. The item had been considered by the Assembly annually until its forty-first session and thereafter biennially. The last time it was considered was at the fifty-first session.

4. At the same session, in its resolution 51/11 of 4 November 1996, the General Assembly noted with satisfaction the continuing efforts of AALCC towards strengthening the role of the United Nations and its various organs, including the International Court of Justice, through programmes and initiatives undertaken by the Consultative Committee. It also noted with satisfaction the commendable progress achieved towards enhancing cooperation between the United Nations and AALCC in wider areas. The Assembly noted with appreciation the decision of the Consultative Committee to participate actively in the programmes of the United Nations Decade of International Law and programmes on environment and sustainable development. The Assembly decided to include the item entitled "Cooperation between the United Nations and the Asian-African Legal Consultative Committee" in the provisional agenda of its fifty-third session.

A. Cooperative framework

5. Pursuant to the cooperation framework agreed upon by the two organizations, consultations have routinely been conducted on matters of common interest, in particular regarding representation at meetings and sessions, exchange of documentation and information, and the identification of

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areas where the supportive role of AALCC might be most productive. During the period under review, meetings were held during the fifty-first and fifty-second sessions of the General Assembly between the Secretary-General of the United Nations and the Secretary-General of AALCC. The Legal Counsel of the United Nations also held meetings with the Secretary-General of AALCC. On the occasion of the thirty-sixth (Tehran, May 1997) and thirty-seventh (New Delhi, April 1998) sessions of the Consultative Committee, the Secretary-General of the United Nations sent messages to those meetings highlighting matters of mutual concern for both organizations.

6. AALCC continues to orient its work programmes so as to accord priority to matters that are of current interest to the United Nations and to initiate actions with a view to strengthening the role of the United Nations. Over the years, the work programme of the Consultative Committee has assumed a role supportive of the work of the United Nations. The areas of cooperation, apart from the field of international law, now cover matters in the economic, environmental and humanitarian fields.

B. Representation at meetings and conferences

7. During the period under review, AALCC was represented at the nineteenth special session of the General Assembly on the overall review and appraisal of the implementation of Agenda 21.

8. AALCC was also represented at various other meetings and conferences held under the auspices of the United Nations and its organs and agencies, including the regular sessions of the General Assembly; the International Law Commission, the United Nations Commission on International Trade Law, the Preparatory Committee on the Establishment of an International Criminal Court, the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, the second session of the Conference of Parties to the United Nations Framework Convention on Climate Change, the second and the third Expert Group Workshops on International Environmental Law (held in May and October 1996, respectively) and the International Environment Conference on Codifying the Rio Principles in National Legislation. AALCC was also represented at the second session of the Commission on Enterprise, Business Facilities and Development of the United Nations Conference on Trade and Development (UNCTAD).

9. To facilitate the participation of the delegates of Member States of AALCC in the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, the AALCC secretariat had prepared an overview of the draft statute for an international criminal court prepared by the Preparatory Committee on the Establishment of an International Criminal Court.

10. Representatives of various United Nations bodies participated in the thirty-sixth and thirty-seventh sessions of AALCC. These included the representatives of the International Law Commission (ILC), the United Nations Commission on International Trade Law (UNCITRAL), the United Nations Environment Programme (UNEP) and the Office of the United Nations High Commissioner for Refugees (UNHCR). The sessions were also attended by representatives of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

C. Strengthening the role of the United Nations and the United Nations Decade of International Law

11. In 1985, AALCC prepared a study on "Strengthening the role of the United Nations through rationalization of its functional modalities with special reference to the General Assembly" (A/40/726 and Corr.1, annex), providing an overall assessment of the functioning of the United Nations, and subsequently, prepared a set of recommendations on the improvement of the functioning of the General Assembly (see A/41/437, annex). Since then, AALCC has continued to follow up on the implementation of the relevant resolutions relating to this subject.

12. Pursuant to General Assembly resolution 44/23 of 17 November 1989, in which the Assembly declared the period 1990–1999 as the United Nations Decade of International Law, AALCC prepared a paper identifying a number of issues involved and activities that might be undertaken during the Decade. At its twenty-ninth session, held in Beijing in March 1990, AALCC urged greater collaboration with the United Nations in that regard. A report on the role that AALCC can play in the realization of the objectives of the Decade was thereafter submitted to the Secretary-General of the United Nations (see A/45/430, annex).

13. In pursuance of the relevant resolutions of the General Assembly, AALCC was invited to undertake activities in the implementation of the programme for the third term of the Decade and to provide information in that respect to the

Secretary-General of the United Nations for transmission to the General Assembly.

14. In 1996, AALCC had convened a special meeting on the establishment of an international criminal court. During the period under review, the secretariat of AALCC organized, within the framework of its thirty-sixth session, a special meeting on the interrelated aspects between international humanitarian law and the international criminal court, which served as a forum for an informal exchange of views on the work of the Preparatory Committee on the Establishment of an International Criminal Court. The special meeting was organized in collaboration with the International Committee of the Red Cross (ICRC). The deliberations at the meeting are reflected in the report on its work, which was published in document form.

15. Within the framework of its thirty-seventh session, the secretariat of AALCC organized a special meeting on reservations to treaties to consider the preliminary conclusions on the reservations to normative multilateral treaties including human rights treaties adopted by the International Law Commission at its forty-ninth session.[1] AALCC expressed its appreciation for the work done by the Commission on this subject and noted its complexity. The Consultative Committee emphasized universal acceptance of the existing reservation regime as set out in the Vienna Convention on the Law of Treaties and proposed that ambiguities, gaps and lacunae should be filled through commentaries to the relevant provisions of the Vienna Convention. The proceedings of the special meeting were thereafter submitted to ILC at its fiftieth session.

D. Promoting wider use of the International Court of Justice

16. AALCC continues its efforts in promoting wider use of the International Court of Justice. The Consultative Committee had earlier prepared a study on the question of possible wider use of the Court which focused on the advantages to be obtained by using the Court or its special chambers.

17. Following the 1992 United Nations Conference on Environment and Development and the adoption of Agenda 21, AALCC had prepared a study on the enhanced utilization of the International Court in matters relating to the protection and preservation of the environment.

18. A meeting of Legal Advisers of States members of AALCC held at United Nations Headquarters in New York in October 1996 was addressed by Judge Shahabuddeen of the International Court of Justice.

19. More recently, the President of the Court, Judge Stephen M. Schwebel, addressed a meeting of Legal Advisers of AALCC member States at United Nations Headquarters in New York in October 1997.

20. AALCC continues to follow closely the work of the International Court of Justice and attaches great significance to its work.

E. Measures designed to further the work of the Sixth Committee of the General Assembly

21. In fulfilment of its function of rendering assistance to its member States and with a view to facilitating their active participation in the work of the General Assembly, AALCC prepares on a regular basis notes and comments on selected items of the agenda of the General Assembly, including those related to the work of ILC and UNCITRAL.

22. During the period under review, consultations were arranged during the General Assembly sessions between the representatives of AALCC member States and representatives of other interested States to provide opportunities for an exchange of views on matters of common interest. During the fifty-second session of the General Assembly, AALCC convened a meeting of Legal Advisers which was attended by most of the Legal Advisers participating in the work of that session. The President of ICJ, the Chairman of the Sixth Committee, the United Nations Legal Counsel, the Chairman of ILC, the Chairman of the Preparatory Committee on the Establishment of an International Criminal Court and the Chairperson of the Working Group of the United Nations Decade of International Law were among those who addressed the meeting.

23. AALCC continues to follow closely the work of ILC and attaches great significance to the items on its agenda, as they are of particular importance to its members. In pursuance of a decision of the Consultative Committee at its thirty-fifth session, the Secretary-General of AALCC, in his presentation to ILC at its forty-eighth session, suggested that the Commission should include in its agenda a topic on "Diplomatic protection" and initiate a feasibility study on "Law of environment".

24. Collaboration between AALCC and UNCITRAL continues. During the period under review, the AALCC

secretariat prepared notes and comments on the work of UNCITRAL at its twenty-ninth and thirtieth sessions.

F. Measures for promotion of the ratification and implementation of the United Nations Convention on the Law of the Sea

25. AALCC continues to monitor closely the work and functioning of the International Tribunal for the Law of the Sea and the International Seabed Authority and the organs therefor. At its thirty-sixth and thirty-seventh sessions, the Consultative Committee urged full and effective participation of its member States in the Authority so as to ensure and safeguard the legitimate interests of the developing countries and to strengthen the principle of the common heritage of mankind. It called upon its member States to give timely consideration to the need to adopt a common policy and strategy for the interim period before the commercial exploitation of the deep seabed minerals becomes feasible, and for this purpose urged member States to take an evolutionary approach especially to the "initial function" of the Authority so as to make it useful to the international community and developing countries during this initial period.

26. Briefs of documents prepared by the AALCC secretariat furnishing an overview of recent developments in matters related to the law of the sea were considered by the Consultative Committee at its thirty-sixth and thirty-seventh sessions. At the latter session, AALCC took note of the work of the Legal and Technical Commission of the Authority regarding the preparation of the Draft Regulations on Prospecting and Exploration of Polymetallic Nodules in the Area.

27. "Oceans and law of the sea" is one of the items on the agenda of the General Assembly for which the AALCC secretariat prepares notes and comments with a view to assisting the representatives of its member States in preparing for its consideration by the General Assembly.

G. International economic cooperation for development

28. During the period under review, the Consultative Committee continued to monitor the progress in the work of UNCITRAL. The AALCC secretariat prepared a progress report covering the legislative activities of the United Nations and other international organizations involved in the development of international trade law which was distributed for information to member States at the thirty-sixth and thirty-seventh sessions. A similar document will be prepared for the thirty-eighth session of the Committee, to be held at Accra in 1999.

29. AALCC at its thirty-seventh session urged its member States to take into account the UNCITRAL Model Law on Insolvency as they developed or revised their legislation on that issue. The Committee also urged its member States to consider adopting, ratifying or acceding to treaties prepared by UNCITRAL.

30. Under a scheme developed by AALCC for the settlement of disputes in economic and commercial transactions, regional arbitration centres have been established in Cairo, Kuala Lumpur, Lagos and Tehran to assist in the promotion and implementation of the UNCITRAL Arbitration Rules. Steps are being taken to establish and make operational a similar centre in Nairobi to serve the countries in eastern and southern Africa.

31. At its thirty-sixth session (Manila, 1996), AALCC considered a study prepared by its secretariat on "The World Trade Organization (WTO) as a Framework Agreement and Code of Conduct for world trade". The study described the organizational structure and functions of WTO and highlighted the importance of some of the provisions contained in annexes to the WTO Agreement.

32. This was followed by a study prepared by the secretariat on the dispute settlement mechanism of WTO. AALCC continues to be actively engaged in monitoring the work and functioning of WTO and intends to organize, in conjunction with the Government of India and WTO, a seminar for the region.

33. AALCC has also addressed the legal issues involved in the privatization of public-sector undertakings and the liberalization of economic activities as a means of increasing economic efficiency, growth and sustainable development in the context of economic restructuring programmes. During its thirty-third session AALCC convened a special meeting on developing legal and institutional guidelines for privatization and post-privatization regulatory framework and published the proceedings of the meeting.

H. Question of refugees

34. AALCC has been actively engaged in the study of refugee law and refugee problems and has been working in close cooperation with UNHCR for that purpose. In December 1996, with the financial and technical assistance of UNHCR, AALCC organized a seminar in Manila to

commemorate the thirtieth anniversary of the principles adopted at Bangkok by AALCC concerning the treatment of refugees. The seminar recommended that the text of the Bangkok Principles and the two addenda thereto of 1970 and 1987 be amalgamated into one consolidated text. A report on the seminar was thereafter published as a document of AALCC.

35. The above proposal was subsequently considered by a meeting of experts organized with the financial and technical assistance of UNHCR in Tehran in March 1998. The recommendations of the meeting of experts were subsequently submitted to AALCC for its consideration.

I. Other issues currently before the Consultative Committee

36. AALCC continues its interest in the analysis of international instruments adopted by the 1992 United Nations Conference on Environment and Development. It has also undertaken a study of the texts of the United Nations Convention on Biological Diversity, the Framework Convention on Climate Change and the Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa. At the thirty-third session, the AALCC secretariat had been directed to continue to monitor the progress in environmental matters, particularly towards the implementation of Agenda 21.

37. The item entitled "Legal protection of migrant workers" has been on the work programme of AALCC since 1996. At the thirty-fifth session, the Consultative Committee urged its member States to transmit their views to the secretariat as to how legal protection to immigrant workers could be effectively implemented. The item remains on the work programme of AALCC with the objective of framing a model legislation.

38. The item entitled "Extraterritorial application of national legislation: sanctions imposed against third parties" has been on the agenda of AALCC since its thirty-sixth session. At its thirty-seventh session, the Consultative Committee considered the item and affirmed its significance and complexity on the basis of a paper prepared by the secretariat. There was general agreement that the validity of any unilateral imposition of economic sanctions through the extraterritorial application of national legislation must be tested against the accepted norms and principles of international law. The principles discussed included those of sovereignty and territorial integrity, sovereign equality, non-intervention, self-determination and freedom of trade. The right to development and the permanent sovereignty over natural resources were specifically mentioned. A report on the deliberations was presented to the International Law Commission at its fiftieth session.

39. In a study prepared on the subject, the secretariat of AALCC recognized that the extraterritorial application of national legislation was necessary in certain instances and that contemporary international law accordingly prescribed the extraterritorial application of municipal legislation in such instances as the performance of consular functions or the control of drug trafficking. The secretariat study is not restricted to the analysis of the legality or otherwise of any particular legislation, nor is the scope of its inquiry restricted to the examination of the municipal legislation of any particular State. Rather, it concentrates on the general principles of the jurisdiction of States, so that AALCC might adopt its own opinion or set of views as to the limits of the permissible exercise of jurisdiction and enunciate, perhaps, the impermissible exercise of extraterritorial jurisdiction. The AALCC secretariat continues to study the legal aspects of this matter.

Notes

[1] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 10* (A/52/10), chap. V.C.